IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

Bail Appl..No. 7569 of 2007()

CRIME 774/07 OF NEDUMANGAD POLICE STATION

PETITIONERS/ACCUSED NO.2 & 3

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1. JAYARAJ, S/O. JAPAMONY,
   KAKKODE, KIZHAKKUMKARA VEEDU, IRINJAYAM,
   NEDUMANGAD.

2. PRADEEP KUMAR @ SHIJI, S/O. MOHANAN,
   CHARUVILAKATHU VEEDU, VANDA, KARIPPOOR,
   NEDUMANGAD.

BY ADV. SRI.A.RAJASIMHAN

RESPONDENTS: COMPLAINANT

SUB INSPECTOR OF POLICE,
NEDUMANGAD POLICE STATION, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7569 OF 2007 A

Dated this the 11th day of December, 2007

O R D E R

Application for anticipatory bail. The petitioners face allegations in a crime registered under Section 379 read with 34 IPC. The petitioners are accused 2 and 3. They apprehend imminent arrest.

2. The learned Public Prosecutor submits that the investigation is now complete. Final report has already been filed. The 2nd petitioner has not been arrayed as the accused in the final report. He is not required to be arrested or proceeded against. In these circumstances, the prayer for anticipatory bail of the 2nd petitioner can, straightaway, be dismissed, it is submitted.

3. So far as the 1st petitioner is concerned, the learned Public Prosecutor submits that the final report has already been filed. It is for the petitioner to appear before the learned Magistrate and seek regular bail. Absolutely no reason exists to justify the prayer for invocation of the

extraordinary equitable discretion under Section 438 Cr.P.C. now, submits the learned Public Prosecutor.

4. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

5. It is for the 1st petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which they could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioners on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be

necessary. Sufficient general directions have been issued in ***Alice George Vs. Deputy Superintendent of Police*** [2003 (1) KLT 339].

6. In the result, this petition is dismissed but with the specific observation that if the 1st petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

7. Hand over copy of this order to the learned counsel for the petitioners.

(R.BASANT, JUDGE)

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